

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

ERIC D. WHEELER,

Plaintiff,

-v-

Case No. C-3:12-cv-182

Judge Thomas M. Rose
Magistrate Judge Sharon L. Ovington

DAYTON POLICE DEPARTMENT, et al.,¹

Defendants.

ENTRY AND ORDER OVERRULING WHEELER'S OBJECTIONS (Doc. #5) TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #3); OVERRULING WHEELER'S OBJECTIONS (Doc. #8) TO THE MAGISTRATE JUDGE'S SECOND REPORT AND RECOMMENDATIONS (Doc. #7); ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS (Doc. #3) AND SECOND REPORT AND RECOMMENDATIONS (Doc. #7) IN THEIR ENTIRETY; DISMISSING WHEELER'S COMPLAINT WITH PREJUDICE; CERTIFYING THAT AN APPEAL OF THIS MATTER WOULD NOT BE TAKEN IN GOOD FAITH; DENYING LEAVE TO APPEAL IN FORMA PAUPERIS AND TERMINATING THIS CASE

Plaintiff Eric D. Wheeler ("Wheeler") brought this § 1983 action pro se against the Dayton Police Department and Officers Ryan T. Halburnt and Michael T. Fuller. Wheeler seeks damages from alleged constitutional injuries that he incurred on May 19, 2009.

Upon initial review of Wheeler's Complaint, Magistrate Judge Sharon L. Ovington determined that Wheeler's claim is time-barred and recommended dismissal. (Doc. #3.) Wheeler then objected (doc. #5) arguing that his previous Complaint had been dismissed without

¹Wheeler asks the Court to take notice that he has never before received a document captioned "Eric D. Wheeler v. Ryan T. Halburnt." (Doc. #9.) The correct caption of this case is "Eric D. Wheeler v. Dayton Police Department, et al." The caption "Eric D. Wheeler v. Ryan T. Halburnt" is a typographical error and documents captioned in this manner are still considered to be a part of this case. Ryan T. Halburnt is a named Defendant but not the first named Defendant.

prejudice and he was advised that he could refile his Complaint.

This matter was then recommitted to Magistrate Judge Ovington for a second consideration. After further review, Magistrate Judge Ovington again concluded that Wheeler's claim is time-barred, even considering Ohio's Savings Statute, Ohio Rev. Code § 2305.19. (Doc. #7.) Wheeler again objected. (Doc. #8.)

As required by 28 U.S.C. §636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge has made a de novo review of the record in this case. Upon said review, the Court finds that Wheeler's Objections to the Magistrate Judge's Report and Recommendations and Wheeler's Objections to the Magistrate Judge's Second Report and Recommendations are not well-taken, and they are hereby OVERRULED. The Magistrate Judge's Report and Recommendations and Second Report and Recommendations are adopted in their entirety.

Wheeler's Complaint is dismissed with prejudice. Further, an appeal of this order would not be taken in good faith and, therefore, leave for Wheeler to appeal in forma pauperis is denied. Finally, this case is hereby ordered terminated on the docket records of the United States District Court for the Southern District of Ohio. Western Division at Dayton.

DONE and ORDERED in Dayton, Ohio, this Seventh Day of August, 2012.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record
Eric D. Wheeler at his last address of record